

24  
FILED  
MAY 10 1943  
JAMES H. HOFFMAN  
CLERK

**In the Supreme Court of the United States**

**OCTOBER TERM 1942**

**No. 1018**

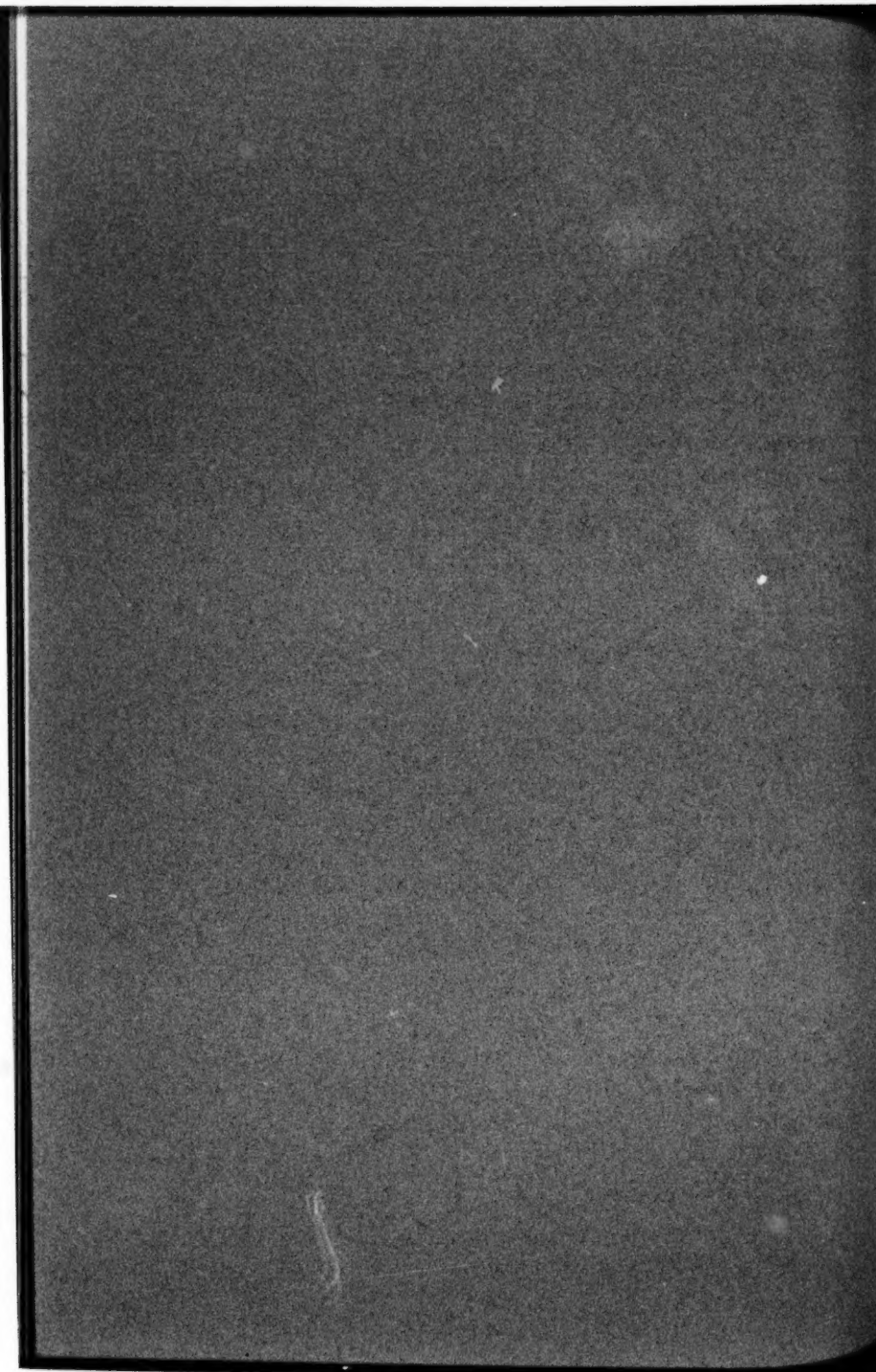
**L. A. WELLS CONSTRUCTION COMPANY,**  
*Petitioner and Appellant Below,*

**vs.**

**COMMISSIONER OF INTERNAL REVENUE,**  
*Respondent and Appellee Below.*

**PETITION FOR WRIT OF HABEAS CORPUS**  
**To the United States Circuit Court of Appeals**  
**For the Sixth Circuit**  
**and**  
**BRIEF OF PETITIONER.**

**MEYER A. COOK,**  
605 Guardian Bldg., Cleveland, Ohio,  
*Attorney for Petitioner.*



## INDEX.

---

PETITION FOR WRIT OF CERTIORARI .....	1
Statement of the Matter Involved.....	1
Argument:	
Point I.—Petitioner's Method of Accounting Clearly Reflected Income for the Year 1937.....	3
Reasons for Granting the Writ.....	4
Prayer .....	5
BRIEF FOR PETITIONER .....	7
Statement of Case.....	7
Questions Presented .....	8
Statutes and Regulations Involved.....	8
Argument:	
Point I.—Appellant's Method of Accounting Clearly Reflected Income For the Year 1937.....	10
Point II.—Appellant's Contract with the Buffalo Sewer Authority Was Not a "Long Term Contract" Within the Treasury Regulations.....	13
Conclusion .....	18

## AUTHORITIES CITED.

---

### Cases.

<i>Bent v. Commissioner</i> , 19 B. T. A. 181; affirmed, 56 Fed. (2nd) 99.....	11, 15
<i>Bradstreet Co. of Maine v. Commissioner</i> , 65 Fed. (2nd) 943 .....	17
<i>Owen-Ames-Kimball Company</i> , 5 B. T. A. 921.....	16
<i>Robert M. Robinson v. Commissioner</i> , Docket No. 106,- 037, C. C. H. Dec. 12,056-B.....	15

### Texts.

<i>Federal Income Gift And Estate Taxation</i> by Rabkin & Johnson, 1942 Edition, paragraph E2 8.....	18
<i>Paul and Mertens, Law of Federal Income Taxation,</i> Volume 1, Paragraph 11.106.....	14
<i>Roswell Magill, 46 Harvard Law Review</i> 948.....	12

### Statutes and Regulations.

Judicial Code, as Amended, Section 240(a) (28 U. S. C. A., Section 347(a)).....	5
Revenue Act of 1936 c. 690, 49 Stat. 1666:	
Section 41 .....	8
Section 42 .....	9
Treasury Regulations 94 (Revenue Act of 1936):	
Article 41-1 .....	8
Article 42-4 .....	9, 13

# In the Supreme Court of the United States

OCTOBER TERM 1942.

No. ....

---

L. A. WELLS CONSTRUCTION COMPANY,  
*Petitioner and Appellant Below,*

vs.

COMMISSIONER OF INTERNAL REVENUE,  
*Respondent and Appellee Below.*

---

## **PETITION FOR WRIT OF CERTIORARI** **To the United States Circuit Court of Appeals** **For the Sixth Circuit.**

---

*To the Honorable, the Supreme Court of the United States:*

This petition of the L. A. Wells Construction Company respectfully shows:

### **STATEMENT OF THE MATTER INVOLVED.**

Petitioner is a corporation, incorporated under the laws of the State of Delaware, having its principal place of business at Cleveland, Ohio. On May 10, 1940, it filed its petition before the United States Board of Tax Appeals for a redetermination of the deficiency determined by the Commissioner of Internal Revenue set forth in his letter Cleveland IRA :90D, dated February 12, 1940. The petition was in the nature of an appeal from the determination by the Commissioner that the petitioner was not entitled to the deduction in its 1937 tax return of an established loss sustained upon a unit price contract with the Buffalo Sewer Authority for the laying of a sewer under Black Rock Channel, Buffalo, New York, because in the opinion of the

Commissioner the petitioner was required to report its income in connection with this particular contract on the completed contract basis since in a few isolated instances in former years it had so reported income.

The facts upon which Petitioner relies as the basis for this proceeding are as follows:

(a) Petitioner is and has been since 1926 engaged chiefly in marine construction work under contracts that vary in their classification according to their terms of compensation.

(b) During the period in which Petitioner has been so engaged it has entered into various types of contracts, which may be classified as follows: (1) "Unit Price" contracts, (2) "Lump Sum" contracts, and (3) "Cost Plus a Fixed Fee" contracts, with a guaranteed maximum.

(c) Petitioner, during said period, has kept its books of account on the basis of the accrual method of accounting and has consistently filed Federal Income Tax Returns on that basis.

(d) During the taxable year 1937, Petitioner entered into and commenced operations upon a "unit price" contract with the Buffalo (New York) Sewer Authority, for the laying of a sewer under Black Rock Channel, Buffalo, New York. By the close of the taxable year, December 31, 1937, said project in accordance with Engineers' estimates had been 46.96% completed and Petitioner had expended in connection therewith the sum of \$244,396.30. The Buffalo Sewer Authority, in keeping with the terms of said "unit price" contract, had passed estimates in the sum of \$182,189.62 and on the basis of the Engineers' estimates Petitioner had computed as an established loss on said project the sum of \$61,031.40. In accord with its method of accounting and for the purpose of clearly reflecting its income for the taxable year 1937, Petitioner set up as a specific deduction to meet said established loss, the said sum of \$61,031.40.

The Petitioner contends that the Commissioner erred in his determination by reason of the fact that such determination is contrary to Treasury Regulations 94, promulgated under the Revenue Act of 1936:

Article 42-4. "Long-term contracts. Income from long-term contracts is taxable for the period in which the income is determined, such determination depending upon the nature and terms of the particular contract. As used in this article the term 'long-term contracts' means building, installation, or construction covering a period in excess of one year."

## **ARGUMENT.**

### **POINT I.**

#### **PETITIONER'S METHOD OF ACCOUNTING CLEARLY REFLECTED INCOME FOR THE YEAR 1937.**

The Petitioner has been, since 1926, engaged principally in marine construction work embracing dredging, building of breakwaters, and the performance of subaqueous construction work of all kinds and has filed its income tax returns in all those years on the calendar year basis. During this period Petitioner has undertaken some forty-five to fifty projects annually, completing in all five hundred to six hundred contracts. Of this entire number seven contracts were commenced in one calendar year and completed in the next calendar year, although so far as indicated the evidence does not disclose, with the exception of the Buffalo Sewer Authority contract, whether these projects contemplated or required a period of more or less than twelve months for completion.

Under the method of accounting employed by Petitioner, it has been the practice, in connection with projects undertaken, to enter currently on its books the receipts from such projects and the expenditures incurred thereon; the profit or loss on each such project was reflected in Petitioner's income upon the completion of each undertaking. With the exception of the seven contracts hereinbefore

noted profit or loss on each project has been reflected in the year such project was undertaken. Petitioner's income tax returns, based on the accrual method of accounting, have been filed annually with the Collector of Internal Revenue for the Eighteenth District of Ohio.

On August 16th, 1937, Petitioner commenced work under a contract with the Buffalo (N. Y.) Sewer Authority for the construction of an intercepting sewer and sewage treatment plant at Buffalo, N. Y. and the terms of the contract provided for completion of the project in 225 consecutive calendar days from commencement of work unless such period should be extended by the Authority. Petitioner completed the project on or about July 10, 1938.

#### **REASONS FOR GRANTING THE WRIT.**

On February 11, 1943, the Circuit Court of Appeals of the United States for the Sixth Circuit affirmed the decision of the United States Board of Tax Appeals upon the grounds and for the reasons set forth in the opinion of the Board of Tax Appeals filed February 11, 1942.

The United States Board of Tax Appeals in its opinion found that since contracts undertaken by the Petitioner in one calendar year and completed in the following calendar year were reported by the Petitioner on the completed contract basis; that the Petitioner was thereby required to report the contract involved in this controversy on the same basis.

The Petitioner contends that this is error, since in the absence of testimony to the contrary, the Petitioner is entitled to the presumption that the contracts reported on the completed contract basis were in fact long-term contracts; and that the contract in question having been completed in less than twelve calendar months in pursuance of the requirements of said contract, that it should not and as a matter of law could not have reported it on the completed contract basis.



The holding of the United States Board of Tax Appeals and the Circuit Court of Appeals is believed to be patently erroneous and the interest of the law require that it be reversed.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A., Section 347(a).

**PRAYER.**

WHEREFORE, your petitioner prays that a writ of certiorari may issue out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of all proceedings in the case numbered and entitled on its docket No. 9294, the L. A. Wells Construction Company, Petitioner-Appellant, vs. Commissioner of Internal Revenue, Respondent-Appellee, and that said judgment may be reversed by this Honorable Court and that your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

THE L. A. WELLS CONSTRUCTION COMPANY,

By: MEYER A. COOK,

*Its Solicitor.*